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IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1949

No. 740

LENA SIMONSEN,

Petitioner,

vs.

JOHN W. EMMERLING, Trustee of
FRANKLIN BUILDING COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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Summary of Argument:

I. Bankruptcy Court in applying its statutory power of limitation-to-cost under Sec. 212, Chapter X, of the Bankruptcy Act, 11 U.S.C.A. 612, must do so within the limits of that statute, and in the absence of findings that claims were acquired fraudulently and in contemplation of the pending proceeding, or used in bad faith in that proceeding, it cannot limit-to-cost claims acquired by fiduciaries 10-13

(a) Trial court and Court of Appeals did not find that claimant's husband, while a member of the bondholders' committee, acted covertly or traded on inside knowledge in acquisition of bonds, or that such purchases

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affected his loyalty or prejudiced the interests of the debtor or other bondholders. On the contrary, both courts found good faith conduct in such acquisition and in the discharge of his duties as a member of the committee 10

(b) Most of $8,000 of bonds acquired by claimant's husband while he was a member of bondholders' committee were acquired about ten years prior to institution of these reorganization proceedings, and the last of them about five years before that, and these proceedings were not started until two and one-half years after death of claimant's husband 12

II. If Bankruptcy Court can go beyond the power provided in the statute and apply the equity rule of limitation-to-cost in such cases, it must follow rule of "good faith conduct" as laid down by this Court in Manufacturers Trust Co. v. Becker, 94 L. Ed. 99, and Securities & Exchange Commission v. Chenery, 318 U.S. 80, and not the absolute rule of Magruder v. Drury, 235 U.S. 106 13-17

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Lena Simonsen, by her counsel respectfully represents to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED

The petitioner filed a claim in this proceeding under Chapter X of the Bankruptcy Act for the reorganization of Franklin Building Company, a corporation, Debtor, in the principal amount of $11,500.00 on account of first mortgage leasehold bonds of such debtor, $3500.00 of

which was acquired by her personally prior to 1935 and $8000.00 of which she inherited from her husband, William Simonsen, which he acquired by purchase through brokers at a total cost of $871.71 between February 9, 1937, and November 20, 1942, as follows: $5500.00 in 1937, $1500.00 in 1938, $500.00 in 1940, and $500.00 in 1942.

The debtor, Franklin Building Company, a corporation organized in 1929, owned a store and office building in the City of Milwaukee, Wisconsin, covered by a first mortgage leasehold bond issue upon which there was due in 1931 $244,400.00 principal amount and after default in the terms of the mortgage an agreement was entered into between the company and a bondholders' committee, on the 23rd day of February, 1932, under which the committee was to manage the building through a trustee chosen by it, for a period of five years to September 1, 1937, until the interest on the mortgage was on a current basis, when the operation of the company would revert to the company, but if default continued then the procedure was to last another five years (R. 26). On September 1, 1937, by agreement, the management of the building by the bondholders' committee was continued for an additional five years to September 1, 1942 (R. 27) and on September 1, 1942, it was agreed that the committee continue to operate the building. The committee's management continued right up to the time of the filing of this proceeding. At the time the bondholders' committee took over, the financial condition of the debtor was bad, its building was only half completed, (R. 27) and there were unpaid delinquent taxes against it in the amount of $42,000.00, exclusive of penalties. Its rents from the building and its bank account were garnisheed, and the unpaid public utilities were refusing to furnish electric and gas service (R. 39).

During this period of approximately fifteen years the committee managed the building (R. 27), collected the rents, paid up all delinquent taxes, which together with penalties amounted to about $66,000.00 (R. 39), and also completed the building for which was spent nearly $100,000.00 of the rents (R. 39).

Although the record does not include the particular proceeding, the building was sold in these proceedings and it appeared from the trustee's brief filed with the Circuit Court of Appeals that there probably would be paid out in distribution in these proceedings 140% of the principal amount of the first mortgage leasehold bonds.

Petitioner is the widow and heir-at-law of William Simonsen, who became a member of such bondholders' committee in the year 1935 and acted on the committee to the date of his death on November 14, 1944.

Debtor filed its petition herein for reorganization on May 5, 1947 (R. 2 to 5 incl.), almost three years after the death of William Simonsen.

The District Court allowed her claim in full on the first listed of the above bonds purchased by her at the time of the original issue thereof, and limited her claim on the other $8,000.00 par value of bonds inherited through her husband to $871.71 (R. 184, 185).

In its decision or order of limitation the District Court made no finding that the bonds thus limited were acquired by William Simonsen in contemplation of the proceeding, or that in acquiring them he was guilty of conduct amounting to bad faith or abuse of fiduciary advantage.

The Court of Appeals affirmed such order.

JURISDICTIONAL STATEMENT

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because the Court of Appeals of the Seventh Circuit (a) has decided an important question of Federal law which has not been but should be settled by this court; (b) has decided a Federal question in a way probably in conflict with applicable decisions on this Court.

QUESTIONS PRESENTED

The following questions are presented:

(a) Is the bankruptcy court's discretionary power under Section 212, Chapter X, of the Bankruptcy Act, 11 U.S.C.A. Sec. 612, to limit-to-cost claims acquired by a member of a bondholders' committee, acting under an agreement with the debtor to manage its building covered by the bond issue, judicially exercised by the application of the absolute rule in *Magruder v. Drury,* 235 U.S. 106, that a fiduciary may not profit by his trust, where there are no findings by the court that the first mortgage leasehold bonds of the insolvent debtor were acquired in contemplation of the proceeding and the committee member was guilty of bad faith conduct in their acquisition or use?

(b) Is the absolute rule of *Magruder v. Drury,* supra, applicable at all in corporate reorganization proceedings to limit-to-cost claims so acquired in the light of this court's recent decision in *Manufacturers Trust Co. v. Becker* (Oct. 1949 Term, Nov. 21, 1949), 94 L. Ed. 99, and *Securities & Exchange Commission v. Chenery,* 318 U.S. 80, adopting the rule of "good faith conduct" in such proceedings?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. The Court of Appeals, although it referred to Section 212 of Chapter X of the Bankruptcy Act, 11 U.S.C.A. Sec. 612, for the court's power to limit-to-cost claims acquired by fiduciaries in corporate reorganization proceedings, actually based its decision on the rule in *Magruder v. Drury,* 235 U.S. 106, holding that the circumstances of good faith in the acquisition of the claims or in their use were immaterial under that rule. The effect of such decision is to read into Section 212 the word "must" instead of Congress' "may" and to make it mandatory in such proceedings automatically to limit such claims to cost under all circumstances.

It is important to the administration of Chapter X of the Bankruptcy Act to know whether it was the Congressional intent under this section to require the Bankruptcy Court to limit-to-cost claims acquired by fiduciaries irrespective of when or how acquired or used in the proceeding, or whether the intent of the Congres was to require the Bankruptcy Court to limit-to-cost only such as are acquired in contemplation or during the proceeding and to use a sound judicial discretion in so limiting. This section has not heretofore been interpreted by this court.

2. The decision of the Court of Appeals is based on the application of the rule in the case of *Magruder v. Drury,* supra. In that respect it is in direct conflict with the "good faith conduct" rule adopted by this court in the *Chenery case,* 318 U.S. 80, and the very recent case of *Manufacturers Trust Co. v. Becker* (Nov. 21, 1949), 94 L. Ed. 99, in corporate reorganization cases, both of which discuss and deliberately hold the rule in *Magruder v. Drury* inapplicable in such cases.

The decision of the Court of Appeals, being dated seventeen days after the date of the decision of this court in *Manufacturers Trust Co. v. Becker,* supra, if not reversed or considered by this court in an opinion dealing with the question involved, will create great confusion in bankruptcy courts as to whether the rule in *Magruder v. Drury* or in *Manufacturers Trust Co. v. Becker,* applies.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court a full and complete record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket No. 9842, In the Matter of Franklin Building Company, a corporation, Debtor, Lena Simonsen, Appellant, vs. John W. Emmerling Trustee of Franklin Building Company, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the Statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by the Court, and for such further relief as to this court may seem proper.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 178 Federal Reporter (2d) 805. The opinion is also printed in full in the record (R. 203-208).

The opinion of the United States District Court for the Eastern District of Wisconsin is reported in 83 Fed. Supp. 263. The opinion is also printed in full in the record (R. 173 to 180, incl.).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C.A. Section 1254.

The United States Court of Appeals for the Seventh Circuit in this case "decided an important question of Federal law which has not been, but should be settled by this court" and "has decided a Federal question in a way probably in conflict with applicable decisions of this court". (Supreme Court Rule 38 (5) (b).)

Judgment was entered in this case by the United States Court of Appeals for the Seventh Circuit on December 8, 1949.

A petition for rehearing was denied on the 16th day of January, 1950.

STATEMENT OF THE CASE

There are no contraverted issues of fact in this case. The pertinent facts, fully stated, appear in the petition in our Summary Statement of the Matter Involved.

The bonds purchased by Simonsen were purchased from brokers, never from individual bondholders, and to prevent them from getting into the wrong hands in order to protect the committee and the bondholders in general (R. 37, 38, 40).

The District Court found that "the bondholders' committee frequently urged the other bondholders to retain their bonds, that they did not solicit the purchase of bonds and made some purchases from brokers, and that some of the committee members undobutedly had in mind that the passage of such bonds into unfriendly hands might result in a change in the program then being carried out by the committee" (R. 177).

The Court of Appeals not only agreed with the District Court in those findings but also found that "the bondholders' committee had taken over a gloomy prospect and in their continued efforts had placed the property in a position where the bondholders might be secured from further loss".

Both the District Court and the Court of Appeals held that irrespective of such good faith conduct on the part of Simonsen, the rule of *Magruder v. Drury,* 235 U.S. 106, that a fiduciary may not profit from his trust was applicable here, and limited the claim as to the $8,000 of bonds acquired by Simonsen to the cost of acquisition.

SPECIFICATION OF ERRORS

The United States Court of Appeals erred:

1. In holding that under Section 212 of Chapter X of the Bankruptcy Act the Bankruptcy Court must automatically limit-to-cost claims acquired by a committee member, no matter when or how acquired, or how used.

2. In holding that a member of a bondholders' committee cannot purchase the mortgage bonds of the insolvent corporation issuing them while the committee was managing the building and business of the debtor under a management agreement.

3. In holding that the rule in *Magruder v. Drury,* 235 U.S. 106, that a fiduciary cannot profit by his trust is applicable and absolute to limit-to-cost claims acquired by fiduciaries in corporate reorganization proceedings under Chapter X.

4. In failing to follow the "good faith conduct" rule in such cases as enunciated by this court in *Manufacturers Trust Co. v. Becker* (October Term, 1949), 94 L. Ed. 99, and *Securities & Exchange Commission v. Chenery,* 318 U.S. 80 (1943).

ARGUMENT

I.

Bankruptcy Court in Applying its Statutory Power of Limitation-to-Cost Must Do So Within the Limits of the Statute, and in the Absence of Findings That Claims Were Acquired Fraudulently and in Contemplation of the Pending Proceeding, or Used in Bad Faith in That Proceeding, it Cannot Limit-to Cost Claims Acquired by Fiduciaries.

The trial court did not find that the claims were acquired in contemplation of the proceeding.

Neither did it find, nor did the Court of Appeals opine, that Simonsen acted covertly or traded on inside knowledge, or that his position as a member of the committee managing the business of the debtor enabled him to purchase the bonds at prices lower than he would otherwise have had to pay, or that his acquisition of the bonds affected his loyalty as a member of the committee or in any way prejudiced the interests of the corporation or other bondholders, or that he acquired his bonds upon better terms than the outside world could have acquired them. On the contrary, both lower courts agreed that the utmost good faith attended his purchase of bonds and the discharge of the committee's duties under the management agreement.

1. Statute involved.

The propriety of the order of limitation-to-cost made by the District Court and affirmed by the Circuit Court of Appeals depends upon an interpretation of *Section 212 of Chapter X of the Bankruptcy Act,* 11 U.S.C.A. Sec. 612, which provides:

> "Section 212. The judge may examine and disregard any provision of a deposit agreement, proxy, power

or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, by the terms of which an agent, attorney, indenture trustee, *or committee purports to represent any creditor or stockholder,* may enforce an accounting thereunder, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy *and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor."* (Italics ours.)

The Bankruptcy Court, being a statutory court, in applying its limitation-to-cost doctrine must do so within the power granted to it by this statute.

> *Securities & Exchange Commission v. United States Realty & Improvement Co.,* 310 U.S. 434, 455; 60 S. Ct. 1044, 1052.
>
> *Young v. Higbee Company,* 324 U. S. 204, 214; 65 S. Ct. 594, 599.

It took six years of investigations, many hearings and study by the Congress and those bodies interested in the subject of Bankruptcy to formulate the Chandler Act (Bankruptcy Act of 1938), (Senate Report 1916 on H.R. 8046, 75th Cong. 3rd Sess. 1938). Chapter X thereof is, in itself, as complete a code relating to corporate reorganization as could possibly have been evolved. The procedure is fully outlined, and rights and liabilities of all persons affected are fully defined. Provisions relating to fiduciaries, their responsibilities, liabilities, power limitations and fees, are included.

Prior to enactment of *Section 212 of Chapter X of the Chandler Act,* Section 77(b), 11 U.S.C.A. Sec. 207b

applicable to corporate reorganizations, provided: " * * * The Judge shall scrutinize and may disregard any limitations or provisions of any depositary agreements, trust indentures, * * * *and may limit any claims filed by such committee member or agent, to the actual consideration paid therefor."* (Italics ours.)

Congress in enacting *Section 212 of Chapter X of the Chandler Act,* 11 U.S.C.A. 612, deliberately added to the language contained in Section 77B(b) the words *"in contemplation or in the course of the proceeding under this Chapter."*

This proceeding was started *ten years* after Simonsen acquired the great majority of his bonds, *five years* after he acquired the last of them, and almost *three years* after death removed him from the committee. A prerequisite to limitation-to-cost under Section 212 is that the claims must have been acquired "in contemplation of *the* proceeding under this chapter". No finding satisfying this prerequisite was made nor, indeed, from these facts, could have been made.

But this is not the only requirement prescribed by the Congress. The use of the word "may" before the words "limit any claim" implies not just the power to do so, but the power to do so judicially by the exercise of a sound judicial discretion.

The Congress and its advisers were undoubtedly fully aware of and familiar with the rule of *Magruder v. Drury,* and if it intended an automatic application of an absolute rule of limitation-to-cost it would have used the word "shall" instead of "may" as it did in Section 249 of the same Chapter, 11 U.S.C.A. 649, relating to disallowance of fees to committee members and others purchasing claims or stock without prior or subsequent approval of the Judge.

Moreover, if that was intended, it would have specifically proscribed the purchase of claims of the debtor by fiduciaries. It is nowhere in the Act proscribed.

The failure of the District Court and Court of Appeals to give consideration to all of the evidence and facts indicating good faith conduct on Simonsen's part, the lack of fraud and overreaching in the acquisition or use of the bonds, and the application by them of the absolute rule of *Magruder v. Drury,* supra, indicates an arbitrary discretion not contemplated or sanctioned by the provisions of *Section 212 of Chapter X of the Bankruptcy Act.*

II.

If Bankruptcy Court Can Go Beyond the Power Provided in the Statute and Apply the Equity Rule of Limitation-to-Cost in Such Cases, it Must Follow Rule Laid Down by This Court in Manufacturers Trust Company v. Becker, 94 L.Ed. 99, and Securities & Exchange Commission v. Chenery, 318 U.S. 80.

The Court of Appeals was satisfied from the record "that the Bondholders Committee, including William Simonsen, strove valiantly to convince owners of the bonds that they should retain them, and that in many cases purchased such bonds from brokers to protect themselves and their co-owners for whom they were acting, from the possibility of the bonds getting into unfriendly hands" and that "the Bondholders' Committee had taken over a gloomy prospect and through their continued efforts had placed the property in a position where it was possible that the bondholders might be secured from further loss," but concluded that irrespective of such good faith and

beneficial conduct, the rule of *Magruder v. Drury,* 235 U.S. 106, that a fiduciary cannot profit from his trust was absolute and was applicable to this case, and also held that members of the bondholders' committee were precluded from purchasing leasehold mortgage bonds of the insolvent debtor corporation.

If in spite of limitations on its power to limit-to-cost, as contained in *Section 212,* the Bankruptcy Court may apply the equitable power of limitation-to-cost, then it could do so only within the rule as laid down by this Court in the Becker and Chenery cases.

The facts and issues involved on this appeal were identical to those in *Manufacturers Trust Company v. Becker,* 94 L. Ed. 99.

In the Becker case the Referee found that from early 1942 the market value of debtor's property was insufficient to pay its debts. The debentures on which respondents' claims were acquired at prices varying from 3% to 14% of face value, were bought after the Becker brothers became directors in 1942. Petition under Chapter XI was filed in May, 1946. The debenture holders received 42c on the dollar of principal on the sale of the debtor's property in the proceeding. The respondents' purchases were without overreaching or failure to disclose any material fact to the selling bondholders, and there was no contention that the conduct of the Becker directors or the respondents amounted to bad faith or abuse of fiduciary advantage.

In the case at bar the record is silent as to the value of debtor's property in 1932 when the building was turned over to the committee to be managed, but apparently the assets were then considered as having such value potentialities as made it advantageous to all concerned to enter

into a voluntary plan of management by a bondholders' group, all with the ultimate purpose of returning it to the debtor after the bond issue was caught up with defaulted interest and the default in the payment of real estate taxes was cured. The operation of the real estate of the corporation, apparently its only asset, was continued as a going business, and the rentals were used to pay operating expenses, complete the building, and clear up the tax defaults. The great bulk of Simonsen's bonds ($7,000 of the $8,000 involved) was bought in 1937 and 1938. A $500.00 bond was bought in 1940 and a $500.00 bond in 1942. The petition for reorganization was filed in May, 1947. The debtor's building was sold in this proceeding and the first mortgage leasehold bondholders will likely receive 100% of principal of bonds plus $400.00 per $1,000.00 bond on account of interest. Simonsen's purchases were from brokers on the open market, were made without overreaching or failure to disclose any material fact to selling bondholders, and no *bad faith or abuse of fiduciary advantage was found.*

The agreement between the debtor and the Bondholders' Committee (trustee's Exhibit No. 3) was purely a management agreement of a going venture—the operation of a store and office building. A trustee, separate and apart from the Committee, with power to manage the building, collect the rents, etc., (Paragraph 3), and disburse them in manner specified in the agreement, (Paragraph 7), was set up thereunder. The Committee's powers under such agreement were extremely limited and were no different from those devolving upon the directors of a corporation to manage the affairs of a corporation—were not even as broad. The Committee did not have the legal title to anything belonging to the debtor, or the bondholders. The bonds Simonsen purchased were no part

of any turned over to him as trustee for any cestuis. The property rights in them belonged to the individual bondholders who could do with them as they pleased.

The agreement, unlike the testamentary trust involved in Magruder v. Drury, did not create an express trust. It did not vest the legal title of the trust res in the Bondholders' Committee. Vesting of legal title of the trust res in an essential element in the creation of an express trust.

54 Am. Jur. 43.

The making of this agreement in 1932 indicates that all interested believed that the debtor's business had actual and potential values sufficient to warrant a plan of management looking towards an eventual rehabilitation without resort to judicial action. Such business continued, free from judicial interference, for seventeen years thereafter. From the facts alone that the management over the years completed the building, paid up all tax delinquencies, and that a sale of the building in these reorganization proceedings resulted in a price for the building which will probably secure for leasehold bondholders 100% of the principal of their bonds plus $400.00 per $1,000 bond on account of interest, it fairly appears that as time was running the debtor was becoming more than less a going concern. This ultimate result is more favorable to such conclusion than the result in the Becker case of only 52c on the dollar of principal of bonds was to the conclusion there that although insolvent the Calton-Crescent, Inc., was a going concern.

The first Chenery case, the Becker case, and this case all have one thing in common—the reorganization of a corporation under applicable Federal laws. Any court established standard of fiduciary conduct in the purchase

of securities of an insolvent corporation, the subject of reorganization, therefore, should be the same in all cases.

III.

Bankruptcy Court Should Not Have Disregarded the Provision in the Agreement Under Which the Committee Acted Which Made the Members Liable Only for Actual Bad Faith, and Which Did Not Proscribe Purchase of Bonds by Committee Members.

Paragraph 16 of the bondholders' committee management agreement (Trustee's Exhibit 3) provided:

> "Neither the trustee nor the Committee shall (a) *be under any duty, obligation or liability not affirmatively expressed in this Agreement;* (b) be answerable or liable for the acts or omissions of any officer, employee, agent or attorney appointed and selected with reasonable care (c) be responsible for the acts or omissions of the others; nor (d) be responsible to anyone at anytime for any matter or thing connected with or related to this Agreement *except on account of his act or his own actual bad faith* in the discharge of duties or expressed powers hereunder." (Italics ours.)

It set the standard of duty as well as the limits of the committee members' liabilities. Such limitations are not repugnant to law and are valid.

54 Am. Jur. 239.

This provision is the basis upon which persons were prevailed upon and willing to accept membership on the committee. It expressly provided that "no member of the committee shall be under any duty, obligation or liability *not affirmatively expressed in this agreement*".

There is *no* provision in that agreement which forbade the purchase of bonds by committee members. The only liability is for *"actual bad faith"*. In this it expresses the attitude of this Court in the *Chenery* and the *Becker* cases.

We thus have not only applicable judicial pronouncements that the controlling factor in these cases is the presence or absence of good faith, but a specific, valid and binding agreement of all the parties concerned that the committee member shall not be liable except for "actual bad faith". Having taken on the duties of a committee member upon that basis the court should not apply towards such committee member in his conduct a stricter measure of duty, and disregard facts of good faith, fair dealing, and unquestioned loyalty.

The effect of the opinion of the Court of Appeals is to give a windfall to all of the other bondholders, including those who may have purchased at low prices, who never expected or contemplated such a windfall, and who wanted, and have a right to expect, only their aliquot portion of what the security brings. The idea of allowing such a windfall was so abhorrent to the majority of the Judges of the Second Circuit Court of Appeals in the Becker case that they spared no words in saying so (p. 951):

> *"These circumstances do not seem to a majority of the court to afford adequate reason to limit the appellees' demands to the cost of the bonds and to transfer the balance as a windfall to the other debenture holders."* (Italics ours.)

and this court affirmed that attitude.

The belief of the courts below that irrespective of the good faith conduct of the fiduciary the limitation-to-

cost doctrine in corporate reorganization proceedings is absolute, and must be automatically applied, is clearly erroneous.

The rule of "good faith conduct" as adopted by this court in insolvent debtor cases and by the Circuit Court of Appeals in *In Re Calton-Crescent, Inc.*, supra, is sufficiently elastic to prevent abuses in corporate reorganization proceedings and circumvention by the purchase of such claims by the fiduciary's immediate relatives.

CONCLUSION

We submit that the application of the rule in *Magruder v. Drury*, 235 U.S. 106, in corporate reorganization proceedings to limit-to-cost claims acquired by fiduciaries against insolvent corporations is contrary to the avowed intent of the Congress as plainly stated in the wording of *Section 212 of Chapter X, of the Bankruptcy Act*, and is in direct conflict with the latest pronouncements of this Court in corporate reorganization proceedings; that certiorari be granted and the judgment of the Circuit Court of Appeals for the Seventh Circuit be reversed.

Respectfully submitted,

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